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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

MORRIS F. GRIFFIN, Plaintiff, Cross-defendant and Appellant, v. COUNTY OF LOS ANGELES, Defendant and Respondent; CHARLES D. ADAMS, Cross-complainant and Respondent.	B251253 (Los Angeles County Super. Ct. No. BC420529)

APPEAL from an order of the Superior Court of Los Angeles County. Elizabeth Allen White, Judge. Appeal dismissed.

Morris F. Griffin, in pro. per., for Plaintiff, Cross-defendant and Appellant.

Kessel & Associates, Elizabeth M. Kessel, Alexis N. Cirkinyan and Victoria N. Jalili for Defendant and Respondent.

Wesierski & Zurek, Frank J. D'Oro and Ryne W. Osborne for Cross-complainant and Respondent.

Morris F. Griffin, in propria persona, appeals from an order denying his second application for reconsideration of the trial court's entry of judgment and order dismissing the County of Los Angeles (County) from Griffin's complaint against Charles D. Adams (Adams) and the County for violation of civil rights, intentional infliction of emotional distress, and other causes of action. We conclude that the trial court's order denying the second application under section 1008, subdivision (a) was not separately appealable, and even if we were to construe Griffin's appeal as from the underlying September 23, 2010 judgment, his appeal was not timely. We therefore dismiss Griffin's appeal as to the County. Because neither Griffin's notice of appeal nor the documents he submitted after oral argument specify any judgment or appealable order entered with respect to Adams, we dismiss the appeal as to Adams.

BACKGROUND

Griffin's complaint against Adams and the County

Griffin's briefs and appendices are not models of clarity. We thus recap the pertinent background facts from our previous opinion, *Adams v. Griffin* (Dec. 28, 2012, B236839) [nonpub. opn.] (*Adams I*) and Adams's responding brief.

In 2006, Adams was elected as a candidate of a bargaining table for his union; Griffin was not elected because he had failed to fill out a candidate form. Subsequently, Griffin allegedly threatened and stalked Adams, defaced Adams's photos posted on "public bulletins," and allegedly spread false rumors about Adams, including that he was homosexual. (*Adams I*, *supra*, B236839, at p. 2.)

On August 26, 2009, Griffin filed a complaint against Adams and the County for breach of a settlement agreement, violation of civil rights, defamation, intentional infliction of emotional distress, harassment, stalking, and automobile vandalism. On June 15, 2010, Griffin filed a first amended complaint (FAC) denominated "1st Amended Request" against Adams and the County.

The County's demurrer and Adams's motion for judgment on the pleadings

On July 20, 2010, the County filed a demurrer to the FAC contending that it was barred as a matter of law because of Griffin's failure to comply with the California Tort Claims Act (Gov. Code, § 810 et seq.).

On September 13, 2010, the trial court sustained the County's demurrer without leave to amend, and the County sent a notice of ruling that day.

On September 23, 2010, the trial court entered judgment in favor of the County and dismissed the case as to the County. Notice of entry of judgment and order was mailed on that day.

On December 16, 2011, the trial court granted Adams's motion for judgment on the pleadings on Griffin's complaint against Adams.

On March 13, 2013, Griffin filed a motion to "revoke prior order to L.A. County's Demurrer" regarding the trial court's September 13, 2010 order sustaining the County's demurrer.

On May 31, 2013, the trial court treated Griffin's motion as an application for reconsideration and denied it as untimely because it did not comply with the "10-day time requirement, nor the requirement that new or different facts, circumstances or law exist. [Code of Civil Procedure, section] 1008[, subdivision] (a)."[1] Notice of that ruling was served on the same day.

On July 22, 2013, Griffin filed the second application for reconsideration of the September 13, 2010 order, captioned "Notice of application to reconsider L.A. County's demurrer CCP 1008(b)."

On August 22, 2013, the trial court denied Griffin's second application for reconsideration. Because Griffin titled the second application as an "application to reconsider," but cited section 1008, subdivision (b), the court analyzed the second application under both section 1008, subdivisions (a) and (b). The court determined the second application was untimely filed under section 1008, subdivision (a) "as to either

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[1] Undesignated statutory references are to the Code of Civil Procedure.

the original demurrer ruling or the May 31, 2013 ruling," and the second application did not present new or different facts, circumstances, or law as required under both section 1008, subdivisions (a) and (b). The court observed that it had considered the exhibits that Griffin had previously submitted as part of his opposition to the County's demurrer or as part of his prior "motion to revoke." The trial court also noted that Griffin had failed to provide a satisfactory explanation why a "'new'" handwritten letter dated May 7, 2009, had not been brought to the court's attention "in the first instance."

The County filed a notice of ruling on August 23, 2013.

Adams's cross-complaint against Griffin

On November 3, 2009, Adams filed a cross-complaint against Griffin for intentional infliction of emotional distress, defamation, and slander. (*Adams I*, *supra*, B236839, at p. 2.)

On November 19, 2009, Griffin filed an answer to Adams's cross-complaint, mistitled, "Intentional infliction of emotional distress; harassment; defamation; demoralization; slander," controverting the causes of action of Adams's cross-complaint. (*Adams I*, *supra*, B236839, at p. 2.)

On December 21, 2009, upon Adams's request for entry of default, default was entered against Griffin on Adams's cross-complaint. (*Adams I*, *supra*, B236839, at p. 2.)

On June 10, 2011, the trial court conducted a prove-up hearing on Adams's cross-complaint and entered a default judgment in favor of Adams and against Griffin on June 10, 2011, for $17,724.52. (*Adams I*, *supra*, B236839, at p. 3.)

On December 28, 2012, we reversed the default judgment because Griffin had answered Adams's cross-complaint in the mistakenly labeled responsive pleading. (*Adams I*, *supra*, B236839, at p. 5.) We remanded to the trial court for further proceedings.

On April 22, 2013, Adams filed a notice of waiver of jury trial on his cross-complaint against Griffin.

On September 5, 2013, the trial court denied as untimely Griffin's "Order Recusing Elizabeth Allen White from Case Number BC420529." On November 25,

2013, Griffin petitioned this court for a writ of mandate, challenging Judge White's refusal to recuse herself. On January 16, 2014, we denied that petition as untimely.

The following background is taken from Adams's brief. At the January 16, 2014 final status conference, Adams announced ready and the trial court stated that the trial would go forward on January 21, 2014. Griffin failed to appear at the final status conference, but later appeared in court where the judge and clerk advised him of the trial date. Griffin claims to have served the clerk at that time with another motion to recuse the trial court.

At the January 21, 2014 court trial of Adams's cross-complaint, Adams again waived jury and answered ready. Griffin demanded a court reporter. The trial court denied Griffin's oral motions for recusal of the court and "'summary judgment.'" The trial court informed Griffin that because of budgetary constraints, the court could no longer provide a court reporter; the trial court further noted that Griffin could have, but had not arranged for a court reporter. Griffin resumed his demand for recusal of the court during opening statements. After the court called Adams's first witness, Griffin walked out of the courtroom, informing the trial judge that he would not participate if the judge were presiding over the trial. He did not return.

The trial court struck Griffin's answer, and a second default prove-up hearing ensued. The court awarded Adams $22,930 in past and future medical expenses, emotional distress, and filing costs.

The notice of appeal

On September 3, 2013, Griffin filed a notice of appeal from the August 22, 2013 order denying "renewed motion to vacate sustained demurrer." There were two oral arguments in this appeal. At the first one on December 16, 2014, Griffin argued the merits of his appeal. At that argument, we asked Griffin and Adams to identify the order that is the subject of Griffin's appeal against Adams because it did not appear that the order identified in Griffin's notice of appeal involved any actions by the trial court regarding Adams. When Griffin in propria persona and Adam's counsel both represented

that there was a notice of appeal identifying an order regarding Adams, we allowed Griffin and Adams to augment the record to identify such an order.

The second oral argument, on February 17, 2015, was limited to the issue of identification of a notice of appeal regarding Griffin's appeal against Adams and argument on the merits to the extent that a notice of appeal was identified by the parties. At the February 17, 2015 argument, Griffin recounted the nine-year history of his claims against Adams. Adams's counsel submitted after Griffin finished his argument.

DISCUSSION

The appeal as to the County does not meet the requirements of either subdivision (a) or (b) of section 1008

Griffin appeals from the trial court's order denying the second application for reconsideration. He presents a litany of grievances that have nothing to do with that order, and we therefore do not consider them for purposes of this appeal. For the reasons set forth below, we dismiss Griffin's appeal from the order denying the second application for reconsideration, whether we consider the second application as an application for reconsideration pursuant to section 1008, subdivision (a), or a subsequent application for reconsideration pursuant to section 1008, subdivision (b).

Section 1008, subdivision (a)

Section 1008, subdivision (a) permits a party to apply for reconsideration of an order within 10 days after service of written notice of entry of the order. The reconsideration motion must be based upon new or different facts, circumstances, or law.

"An order denying a motion for reconsideration made pursuant to [section 1008,] subdivision (a) is not separately appealable. However, if the order that was the subject of a motion for reconsideration is appealable, the denial of the motion for reconsideration is reviewable as part of an appeal from that order." (§ 1008, subd. (g); *Tate v. Wilburn* (2010) 184 Cal.App.4th 150, 156 (*Tate*).) Given section 1008, subdivision (g)'s dictate that standing alone, a motion for reconsideration is a nonappealable order, Griffin cannot separately appeal from the trial court's order denying the second application for reconsideration under section 1008, subdivision (a).

The September 23, 2010 entry of judgment and dismissal, which is the subject of Griffin's second application for reconsideration, is an appealable order. (§ 904.1, subd. (a)(1) [appeal may be taken from a judgment].) Thus, the denial of Griffin's second application for reconsideration may be reviewable as part of an appeal from that judgment and dismissal. Still, as we explain below, there are insurmountable problems requiring us to dismiss Griffin's appeal.

We note first that Griffin failed timely to file the second application for reconsideration within 10 days of service of written notice of entry of the September 23, 2010 entry of judgment and dismissal, as required under section 1008, subdivision (a). Griffin filed the second application for reconsideration on July 22, 2013, far later than the required 10 days after service of written notice of entry of the judgment.

Second, putting aside for the moment that the second application for reconsideration was not valid because it was not timely filed, his appeal was not timely. (*Branner v. Regents of University of California* (2009) 175 Cal.App.4th 1043, 1049 [valid motion for reconsideration is one that complies with procedural requirements].) California Rules of Court, rule 8.108(e) provides that a *valid* motion to reconsider an appealable order extends the time to appeal from the order until the *earliest of* 30 days after service of an order denying the motion, 90 days after the first motion to reconsider is filed, or 180 days after entry of the appealable order. Thirty days after service of the May 31, 2013 order denying the application for reconsideration was June 30, 2013. Ninety days after the filing of the March 13, 2013 application for reconsideration was June 12, 2013. One hundred eighty days after the September 23, 2010 entry of judgment and dismissal was March 22, 2011. Thus, Griffin had to file his appeal by March 22, 2011.

Because Griffin filed his appeal only on September 3, 2013, over two years after the deadline for appeal, his appeal from the September 23, 2010 entry of judgment and dismissal was not timely.

We conclude that the trial court's order denying the second application under section 1008, subdivision (a) was not separately appealable and even if we were to

construe his appeal as one from the underlying September 23, 2010 judgment, his appeal still would not be timely.

Section 1008, subdivision (b)

Under section 1008, subdivision (b), "A party who originally made an application for an order which was refused in whole or part, or granted conditionally or on terms, may make a subsequent application for the same order upon new or different facts, circumstances, or law . . . ."

Regardless of whether a subsequent application can be based on an untimely original application for reconsideration, an appeal cannot be taken from an order denying a subsequent application for reconsideration under section 1008, subdivision (b). (*Tate, supra,* 184 Cal.App.4th at pp. 158–160 [decided upon case law when subdivision (g) merely read, "'This section applies to all applications for interim orders.'"].) Section 1008, subdivision (g), which was revised after *Tate* to add the above quoted language, expressly applies only to an appeal from an application for reconsideration under section 1008, subdivision (a).

We conclude that the trial court's order denying the second application under section 1008, subdivision (b) is a nonappealable order. Having concluded that we must dismiss the appeal as to the County, we do not address the County's other arguments.[2]

Because Griffin failed to identify any order relative to Adams in his notice of appeal, his appeal must be dismissed

With respect to Adams's cross-complaint, Griffin claims evidentiary errors, violation of his constitutional rights because the court did not recuse itself, and denial of due process of law for lack of notice of the unavailability of a court reporter, among other reasons.

Each appealable judgment or order must be identified in the notice of appeal to be reviewable. (Cal. Rules of Court, rule 8.100(a)(2).) We recognize that we must construe

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[2] The County argued that Griffin failed to follow mandatory briefing requirements and that the court did not err either in sustaining the County's demurrer without leave to amend or in denying the second application for reconsideration.

a notice of appeal "liberally" and that the notice is "sufficient" if "it identifies the particular judgment or order being appealed." (*Ibid.*)

In the notice of appeal filed on September 3, 2013, Griffin did not identify any judgment or order pertaining to Adams, but only purported to appeal from the trial court's August 22, 2013 order denying the second application for reconsideration of the trial court's rulings regarding the County. Even under the liberal rule of construction recited in California Rules of Court, rule 8.100(a)(2), Griffin's notice of appeal was insufficient notice of any trial court ruling regarding Adams because it did not identify any such order.

On December 19, 2014, Adams filed a motion to augment the record, which we granted, that contained duplicates of his previously filed appeal brief and appendix.[3] None of these documents is a notice of appeal or a document that could be construed as a notice identifying an order of the trial court regarding Adams.

On December 22, 2014, Griffin filed a document entitled, "1. motion to augment record to take judicial notice for Charles D. Adams: [¶] 2. March 13, 2013 motion to vacate clerical mistakes in judgment [¶] 3. to render relief for intentional infliction of emotional distress from contempt [¶] 4. including my August 20, 2014 summary judgments, adjudication request, ignored by Adam's [*sic*] attorney." The document contains copies of pleadings, reporter's transcripts, a request for orders to stop harassment, employment time sheets, a psychiatric and physical evaluation of Griffin and other medical records, and a cover and signature page of a bargaining agreement, most of which copies predate 2011. The document does not constitute or contain a timely notice of appeal from any order with respect to Adams.

On December 26, 2014, Griffin filed a motion to augment that stated he was "asking this Appellate Court to Rule on my Sept. 3, 2013 Recusal Notice Posted to Judge Elizabeth A. White who showed no timely response incurred." As proof that he filed a

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[3] Adams's appendix contains Adams's notice of waiver of jury trial and orders relating to Griffin's efforts to recuse the trial judge and the related writ proceeding before us.

notice of appeal regarding Judge White's denial of his motion to recuse her, Griffin referred to four documents that he had filed previously, none of which is a notice of appeal with respect to Adams.

First, Griffin attached a copy of the Los Angeles Superior Court case summary for *Griffin v. Adams* (Super. Ct. L.A. County, 2009, No. BC420529), which indicates that on September 3, 2013, Griffin filed a notice of appeal.[4] The September 3, 2013 notice of appeal filed by Griffin, and contained in our record, is from the August 22, 2013 order of the trial court denying Griffin's renewed motion to vacate the demurrer against the County and not from any order with respect to Adams.

Second, Griffin included a printout entitled, "Case Summary," on which is circled several entries from 2009, 2010, and 2011, some of which include the handwritten notation "Adams." This is not a sufficient notice of appeal, let alone a timely one.

Third, Griffin attached a copy of a "motion for relief of default designation for Sept. 3, 2013 and/or November 25, 2013 writ of mandate," which was received in the clerk's office of the Second District Court of Appeal on February 4, 2014. The body of this document, however, references mainly Griffin's assertion that the trial judge should have recused herself. This document too does not constitute a timely notice of appeal from any order with respect to Adams.

Fourth, Griffin attached a copy of his "order recusing Elizabeth Allen White from case number BC420529," filed on September 3, 2013. Again, this document does not constitute a timely notice of appeal from any order with respect to Adams.

We conclude that Griffin did not file a timely notice of appeal from any order with respect to Adams. We also note that Griffin's only recourse regarding Judge White's September 5, 2013 denial of his motion to disqualify her was to file a petition for a writ of mandate pursuant to section 170.3. On January 16, 2014, we treated Griffin's

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[4] We take judicial notice of the Los Angeles Superior Court case summary. (Evid. Code, § 452.)

November 25, 2013 application for a writ of mandate as a petition for writ of mandate, which we denied as untimely.

In addition, we reviewed our record, which review identified that on December 5, 2013, Griffin electronically filed a "civil case information statement" (statement) in which he indicated that he was appealing from orders entered on May 31, 2013, August 22, 2013, and September 5, 2013, and attached those orders to the statement.

Assuming for argument's sake that the statement could be construed as a notice of appeal and that it was timely filed, the first document Griffin attached to the statement is a May 31, 2013 tentative ruling, most of which relates to a motion involving the County. In that document, the trial court did refer to the judgment entered on December 16, 2011, after Adams prevailed on his motion for judgment on the pleadings and that there were no grounds under section 473, subdivision (b) to vacate that judgment. To the extent that inclusion of this tentative ruling in the statement could be construed to be a notice of appeal, the appeal clearly would be untimely. "[A] notice of appeal must be filed on or before the earliest of: [¶] (A) 60 days after the superior court clerk serves on the party filing the notice of appeal a document entitled "Notice of Entry" of judgment or a file-stamped copy of the judgment, showing the date either was served; [¶] (B) 60 days after the party filing the notice of appeal serves or is served by a party with a document entitled "Notice of Entry" of judgment or a file-stamped copy of the judgment, accompanied by proof of service; or [¶] (C) 180 days after entry of judgment." (Cal. Rules of Court, rule 8.104.)

The second document attached to the statement is the trial court's tentative ruling on the second motion for reconsideration regarding Griffin's claims against the County. There is no reference to any order involving Adams in that document. The final document is the trial court's September 5, 2013 minute order denying Griffin's motion to recuse the trial judge. As set forth *ante*, Griffin's recourse with respect to the trial judge's denial of his recusal motion was to file a petition for a writ of mandate, which he did, albeit not successfully.

In sum, we have gone to great lengths to ensure that Griffin had his day in court. We are satisfied that he did. For all these reasons, we do not address Adams's arguments that Griffin failed to show judicial bias; the trial court properly struck the section 170.3 statement; Griffin's recusal attempts were untimely; and Griffin failed to seek a writ of mandate.

DISPOSITION

The appeal is dismissed. Griffin is to bear costs.

NOT TO BE PUBLISHED.

BENDIX, J.*

We concur:

CHANEY, Acting P. J.

JOHNSON, J.

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.